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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JON WOOD, *et al.*

Plaintiff,

v.

2018HMO LLC DBA HIKEI MODERN
CANNABIS, *et al.*

Defendants.

Case No. 37-2021-00053035-CU-OE-CTL

Hon. Carolyn Caietti
Dept. 70

CLASS ACTION

**Plaintiff's Memorandum of Points and
Authorities in Support of Motion for Attorneys'
Fees and Costs**

Motion for Final Approval

Date: April 14, 2023

Time: 10:30 a.m.

Action Filed: December 20, 2021

[Filed concurrently with Notice of Motion and
Motion for Attorneys' Fees and Costs, Declaration
Rick A. Waltman, Declaration of Jarrod Salinas,
Declaration of Plaintiff Jon Wood; and [Proposed]
Order]

1 **I. INTRODUCTION**

2 Plaintiff Jon Wood, individually and on behalf of the class conditionally certified for settlement,
3 moves the Court for attorneys’ fees of \$166,666.67 (33.33 [repeating] percent of the \$350,000 Gross
4 Settlement Amount) and reimbursement of \$12,147.50 in actual litigation costs expended by Class
5 Counsel in connection with this class action settlement on behalf of 192 Class Members and 149 PAGA
6 Class Members who worked for Defendant 2018HMO LLC dba Hikei Modern Cannabis (“Hikei”) and
7 2018HMPF LLC (collectively, “Defendants”) during the class period.

8 Plaintiff seeks attorneys’ fees and costs under the terms of the Parties’ Class Action Settlement
9 Agreement (“Settlement”) and pursuant to Labor Code sections 226, 1194, 2802, 2699 and Code of
10 Civil Procedure section 1021.5. This unopposed attorneys’ fees motion is filed together with Plaintiff’s
11 Motion for Final Approval of Class Action Settlement and is supported by the concurrently filed Notice
12 of Motion and Motion, this Memorandum, the Declaration of Rick A. Waltman, the Declaration of
13 Jarros Salinas (Settlement Administrator), along with the Proposed Order Granting Final Approval of
14 Class Action Settlement and Entering Judgment, which have been submitted to the Court.

15 Class Counsel obtained a substantial monetary recovery for the participating class members,
16 reflecting 93% of the reasonable value of the class claims. *See* Memorandum of Points and Authorities
17 in support of Motion for Prelim. Approval, pp. 10-11. The highest estimated class member is
18 \$4,107.91, with the average being approximately \$977.32. Declaration of Jarrod Salinas (“Salinas
19 Decl.”), ¶ 13. Class Counsel worked on a purely contingent fee basis and obtained this Settlement by
20 applying their skill and experience in wage and hour class actions. *See generally* Declaration of Rick
21 A. Waltman (“Waltman Decl.”). The case was litigated efficiently and effectively. The lack of any
22 class member objections and zero opt outs to date supports the quality of the Settlement, along with
23 the requested attorneys’ fees and costs. *See* Salinas Decl., ¶¶ 6-11.

24 Plaintiff respectfully requests the Court confirm terms of the Settlement and grant this
25 unopposed motion for attorneys’ fees and costs in connection with the pending final approval motion.

26 **II. BACKGROUND**

27 The background is stated in Plaintiff’s Motion for Final Approval and prior Motion for
28 Preliminary Approval and is summarized again below for the Court:

1 Plaintiff, a former employee, alleged Hikei: failed to pay minimum wages for all hours worked;
2 failed to pay overtime wages at the lawful rate for all overtime hours worked; failed to pay meal and
3 rest period premiums at the lawful hourly rate; failed to pay all wages each pay period on time, as a
4 result of the foregoing violations; provided inaccurate wage statements as a result of the foregoing
5 issues; failed to pay paid sick leave at the lawful hourly rate; failed to reimburse all employee
6 expenses; and is liable for waiting time penalties and civil penalties under the Private Attorneys
7 General Act (PAGA). *See* First Amended Class and Representative Action Complaint, ROA #17.

8 After serving discovery and obtaining all of the necessary documents, data, and information
9 necessary to calculate prospective damages and liability, Plaintiff agreed to mediate the case on a class
10 wide basis with Hikei. Plaintiff retained an expert economist to prepare damage models, which were
11 then used to resolve the case. The Parties mediated the case on May 24, 2022 with Hon Joan M. Lewis
12 (Ret.”), a retired Superior Court judge and experienced mediator. The Parties settled the case in the
13 months following mediation, and negotiated the Settlement through August 2022. *See* Waltman Decl.,
14 ¶¶ 12-13.

15 On December 9, 2022, the Court granted preliminary approval of the Settlement. The class
16 notice was then distributed to 188 individuals; there are zero opt outs and zero objections, meaning a
17 100% participation rate. Salinas Decl., ¶¶ 6-11.

18 **III. SETTLEMENT TERMS**

19 As outlined in the Settlement (attached as Exhibit 1 to the Declaration of Rick A. Waltman
20 (“Waltman Decl.”)), the parties agreed the case may be settled for \$350,000, of which no part of which
21 may revert to Hikei. The gross amount includes, subject to the Court’s final approval:

- 22 (a) attorneys’ fees up to \$166,666.67 (33.33%);
- 23 (b) actual costs of \$12,147.50 (less than the capped amount of up to \$20,000 in the Settlement);
- 24 (c) class representative service award to Plaintiff of \$12,500 apiece for acting as class
25 representatives, and for the work performed, risks undertaken, and substantial benefits conferred on
26 the class;
- 27 (d) third-party settlement administration expenses of \$8,950.00;
- 28

(e) payment to the Labor Workforce and Development Agency of \$12,000 (75% of the total \$16,000 PAGA penalty).

These settlement terms were preliminarily approved by the Court as fair and reasonable at the preliminary approval hearing on December 9, 2022. The final approval hearing is set for April 14, 2023, at which time the instant unopposed attorneys' fee motion will also be heard by the court.

IV. LEGAL ANALYSIS

A. Fees Based on a Percentage of the Common Fund is Appropriate

In the case of a common fund—like the one in this case where there is no reversion or claims process—the percentage method is the preferred method under California law. *See Laffitte v. Robert Half International Inc.*, 1 Cal. 5th 480, 494 (2016). The California Supreme Court in *Laffitte* recognized several advantages of the percentage method, “including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.” *Laffitte*, 1 Cal. 5th at 503.

The purpose of the common fund approach is to “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.” *Quinn v. State of California*, 15 Cal.3d 162, 167 (1995). The common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.” *City and County of San Francisco v. Sweet*, 12 Cal.4th 105, 110 (1995).

A common fund fee award is proper here as it spreads the attorneys’ fees among all beneficiaries of the fund, aligns the incentives between Class Counsel and the class, better approximates market conditions in a contingency case, and encourages Class Counsel to seek early settlement and avoid unnecessarily prolonging litigation. *See Laffitte*, 1 Cal. 5th at 503. Here, Class Counsel undertook representation at their own expense, with compensation wholly contingent upon providing a benefit to

absent class members. Based on the defined and clearly traceable class benefit, the Court may award a percentage of the common fund as attorneys' fees.

B. One-Third of the Common Fund is a Reasonable Fee

"California courts routinely award attorneys' fees of one-third of the common fund." *Beaver v. Tarsadia Hotels*, 2017 U.S. Dist. LEXIS 160214, *28 (S.D. Cal. Sept. 28, 2017). Several studies of class action fee awards have found the median common fund fee award is approximately one-third of the total settlement fund. *See, e.g., Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) ("fee awards in class actions average around one-third of the recovery."); Reagan W. Silber and Frank E. Goodrich, *Common Funds and Common Problems: Fee Objections and Class Counsel's Response*, 17 *Rev. Litig.* 525, 546 (1998); T. Willging, L. Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules*, 90 (1996) (attorneys' fees in class litigation "were generally in the traditional range of approximately one-third of the total settlement").

An award of 33.33% or one-third of a common fund is the "benchmark" in California. *Smith v. CRST Van Expedited, Inc.*, 2013 U.S. Dist. LEXIS 6049, *14 (S.D. Cal. Jan. 14, 2013) ("These percentages compare favorably with" the California (33%) benchmark.); *Dennis v. Kellogg Co.*, No. 09-CV-1786-L (WMc), 2013 U.S. Dist. LEXIS 163118, at *7 (S.D. Cal. Nov. 14, 2013); *see also Weber v. Einstein Noah Restaurant Group, Inc.*, No. 37-2008-00077680 (San Diego Super. Ct.) (40% award); *Chalmers v. Elecs. Boutique*, No. BC306571 (L.A. Super. Ct.) (33% award); *Boncore v. Four Points Hotel ITT Sheraton*, No. GIC807456 (San Diego Super. Ct.) (33% award); *Albrecht v. Rite Aid Corp.*, No. 729219 (San Diego Super. Ct.) (35% award).

Class Counsel has obtained a quality settlement (85%) for the class that will provide robust and substantial compensation for the asserted wage and hour claims. Class Counsel litigated this matter on a contingent fee basis and their requested fee award is in line with what other courts in this circuit and in this state customarily award in cases where Class Counsel took the case on contingency and achieved a strong result for the class. *See, e.g., Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1209-10 (C.D. Cal. 2014) (approving 33% fee award from common fund settlement where counsel took the case on contingency); *Thieriot v. Celtic Ins. Co.*, 2011 WL 1522385, at *6 (N.D. Cal. Apr. 21, 2011)

(approving 33% fee award where class took the case on contingency and “obtained quality results”); *see also Good Morning to You Prods. Corp. v. Warner/Chappell Music, Inc.*, 2016 WL 6156076, at *2-5 (C.D. Cal. Aug. 16, 2016).

C. The Quality of the Settlement Supports the Attorneys’ Fee

This pre-certification settlement provides substantial and robust recovery to 188 class members, approximating 85.1% of its total value, and averaging payments of nearly \$1,000, with highs reaching more than \$4,000. *See* Salinas Decl., ¶ 13. As detailed in Plaintiff’s Motion for Preliminary Approval: “[t]he GSA [gross settlement amount of \$350,000] represents nearly 85.1% of the reasonable value of the class claims.” Mot. for Prelim. App., p. 6. Zero individuals requested exclusion and no individual has provided notice of his or her intent to object to the Settlement. The notice was distributed properly and adequately, with only two notices being undeliverable. Salinas Decl., ¶¶ 6-11. The amount obtained in settlement on an individual basis for the workforce, paired with the successful notice and reaction of the class further supports the unopposed requested attorneys’ fee in this case.

D. Optional Lodestar Cross-Check Confirms Reasonableness of Fee

A court *may* conduct a lodestar “cross-check” to determine the reasonableness of the attorneys’ fees requested by (1) by multiplying the number of hours reasonably expended litigating the successful claims by a reasonable hourly rate; and (2) adjusting the lodestar “upward or downward by an appropriate positive or negative multiplier reflecting a host of reasonableness factors,” including “the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.” *In re Bluetooth*, 654 F.3d at 941-42. When it is used, the cross-check “calculation need entail neither mathematical precision nor bean-counting,” is not intended to be a “full-blown lodestar inquiry,” and “can be performed with a less exhaustive cataloguing and review of counsel’s hours.” *Barbosa v. Cargill Meat Solutions Corp*, 297 F.R.D. 431, 451 (E.D. Cal. July 2, 2013).

Plaintiff’s lodestar hours are set forth below. When cross-checked with the requisite 2.769 multiplier (i.e., \$81,437.50 x 2.769 = \$225,500.4375), the common fund fee requested pursuant to the terms of the Settlement is even below the presumptively acceptable range for purposes of the lodestar crosscheck in class action settlements. *Laffitte, supra*, 1 Cal. 5th at 489; *Dyer v. Wells Fargo Bank*,

N.A., 303 F.R.D. 326, 334 (N.D. Cal. 2014) (“A 2.83 multiplier falls within the Ninth Circuit’s presumptively acceptable range of 1.0-4.0”).

Timekeeper	Attorney Years	Rate	Hours	Fees
Nicholas Ferraro	7	\$550	49	\$26,950
Lauren Vega	7	\$550	25	\$13,750
Rick Waltman	7	\$550	68.5	\$37,675
Cass Lazar	Paralegal	\$250	12.25	\$3,062.50
TOTAL			184	\$81,437.50

See Waltman Decl., ¶ 19.

First, the hours expended by Class Counsel are reasonable and efficient. A trial court should defer to a “lawyer’s professional judgment as to how much time he was required to spend on the case.” *Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1111 (9th Cir. 2014) (citing *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)). Class Counsel’s investigation into the claims began in or around November 2021 when Plaintiff contacted Class Counsel to investigate the potential case. The initial investigation culminated in the filing of the PAGA notice in December 2021 and the eventual filing of the class action lawsuit in December 2021. (See Declaration of Plaintiff Jon Wood.”) Since then, Class Counsel has effectively and efficiently litigated this case from inception through settlement. Cases that settle pre-certification take a requisite number of hours when the case is properly advanced from retention and investigation, through pleading, discovery and informal discovery, expert analysis, mediation, settlement, settlement approvals, and administration. In this case, Class Counsels’ **184** total firm hours is in line with the amount of labor required in similar cases that have settled pre-certification.

Second, Class Counsels’ hourly rates comport with the *Laffey* Matrix, an inflation-adjusted methodology of attorney rates. As detailed in the supporting declaration of Rick A. Waltman, Class Counsel have years’ of experience in litigating cases similar to this one, and have been approved as class counsel in many matters previously. See *Blount v. Host Healthcare, Inc.*, Case No. 21-CV-310-MMA-WVG. (S.D. Cal. April 12, 2022); see also Waltman Decl., ¶¶ 19-27. Moreover, Class Counsel continually monitors prevailing market rates of defense and plaintiff law firms. Class Counsel sets its rates based on the market conditions as well as comparative rates for lawyers of similar skill, qualification, and experience. Waltman Decl., *Ibid.*. Other labor and employment lawyers before

California courts charge comparable if not higher rates, including Class Counsels' prior law firms. *See* Waltman Decl., Ex. 4 (2014 National Law Journal survey of hourly billing rates for Partners and Associates).

Furthermore, the hourly rates above are congruent with the *Laffey* Matrix, an inflation-adjusted methodology of attorney rates for lawyers of varying experience levels first approved by the U.S. Court of Appeals for the District Court of Columbia in *Laffey v. Northwest Airlines, Inc.*, 746 F.2d 4 (D.C. Cir. 1984). Waltman Decl. ¶ 3, Ex. 3 *Laffey* matrix.¹ The *Laffey* Matrix provides "some objective source for setting counsel's hourly rates." *In re HPL Technologies, Inc. Securities Litigation*, 366 F. Supp. 912, 921 (N.D. Cal. 2005). The *Laffey* matrix, for attorneys with up to 7 years experience, provides for a median rate of \$468 per hour, with the median increasing to \$676 for attorneys with 8 to 10 years experience. *See* Waltman Decl., ¶ 3, Ex. 3 (*Laffey* matrix). These amounts are relative and are properly adjusted upward to account for metropolitan locales. *See, e.g., In re HPL Technologies, Inc. Securities Litigation*, 366 F. Supp. 912, 922 (N.D. Cal. 2005) ("adjusting the Laffey matrix figures upward by approximately 9% will yield rates appropriate for the Bay Area").

Last, the cross-check multiplier is reasonable and within the presumptively acceptable range. *Laffitte, supra*, 1 Cal. 5th at 489. Class Counsels' requested fee reflects a fee multiplier of 1.43, which is in the lower end of the acceptable range. *See, e.g., Rodriguez v. Marshalls of CA, LLC*, No. EDCV181716MWFSPX, 2020 WL 7753300, at *10 (C.D. Cal. July 31, 2020) (granting multiplier where risks to the litigation made an unfavorable outcome uncertain); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) ("A 2.83 multiplier falls within the Ninth Circuit's presumptively acceptable range of 1.0-4.0").

E. All Factors Support Approval of Class Counsels' Fee

Courts often award fees equaling one-third of the gross recovery in class action settlements. However, "regardless whether the percentage method or the lodestar method is used, fee awards in

¹ In *Syers Properties III, Inc. v. Rankin*, the California Court of Appeal affirmed a trial court order granting attorneys' fees relying upon the adjusted Laffey Matrix rates. 226 Cal. App. 4th 691, 697 (2nd Div. 2014). The trial court in *Syers* relied heavily on the Laffey Matrix, and the Court of Appeal affirmed the fee award and pointed out that reliance on "the adjusted Laffey Matrix rates requested by [prevailing party] were reasonable and appropriate for the lodestar calculation." *Id.* at 702-03.

1 class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43,
2 66, n. 11 (2008); *see e.g., Laffitte*, 1 Cal. 5th at 485-87 (affirming trial court’s granting of a fee request
3 for one-third of a \$19 million settlement). “Other case law surveys suggest that 50% is the upper limit,
4 with 30-50% commonly being awarded in case in which the common fund is relatively small.” *Cicero*
5 *v. DirecTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486, at *6 (C.D. Cal. July 27, 2010) (citing
6 Rubenstein, Conte and Newberg, NEWBERG ON CLASS ACTIONS, at § 14:6).

7 Although Class Counsel requests attorneys’ fees as a percentage of the common fund (rather
8 than under the lodestar method), the fees requested are reasonable under either approach. *See Six*
9 *Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) (“[a]lthough
10 statutory awards of attorneys’ fees are subject to ‘lodestar’ calculation procedures, a reasonable fee
11 under the common fund doctrine is calculated as a percentage of the recovery [] ... the choice between
12 lodestar and percentage calculation depends on the circumstances”).

13 **F. Litigation Expenses Are Reasonable**

14 Class Counsel are entitled to reimbursement of the out-of-pocket costs they reasonably incurred
15 investigating and prosecuting this case. *See In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362,
16 1366 (N.D. Cal. 1995) (citing *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970)). Class
17 Counsel expended a total of \$12,147.50 in ordinary and reasonable litigation expenses. *See Waltman*
18 *Decl.*, ¶ 20. Class Counsel’s request for litigation costs in the amount of \$12,147.50 should be granted
19 in accordance with the Settlement, which allows reimbursement of up to \$20,000 in costs.

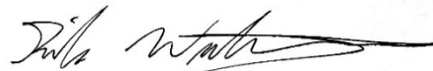
1 **V. CONCLUSION**

2 This case was effectively litigated with reasonable hours by experienced attorneys in wage and
3 hour class actions. The Settlement results in a positive recovery for the class. There are no objectors,
4 no disputes, and no opt outs. Plaintiff respectfully requests the Court grant the motion for attorneys'
5 fees and costs.

6
7 Respectfully submitted,

8 Dated: March 20, 2023

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